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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,281	02/03/2006	Gerrit Jan Nieuwenhuis	MULLE45.001APC	6247
20995 7590 05/13/2009 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER				
BUL, LUAN KIM				
ART UNIT		PAPER NUMBER		
3728				
NOTIFICATION DATE		DELIVERY MODE		
05/13/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
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Office Action Summary

Application No.

10/541,281

Applicant(s)

NIEUWENHUIS, GERRIT JAN

Examiner

Luan K. Bui

Art Unit

3728

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 6-15, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) 7-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 6, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SI/08)
Paper No(s)/Mail Date 4/6/09
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Prosecution Application

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/6/2009 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 4, 6, 21 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrases "substantially equal to a cross-sectional shape of the pin support" in claims 1 and 22 define the bundle of flattened foil bags in reference to a pin support of a foil bag opening machine which is undefined and has not been positively claimed rendering the claims vague and indefinite because it is not clear what structural limitations applicant intends to encompass with such language.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 4, 6, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilfong, Jr. (4,995,860) in view of Sengewald (4,779,996) or Rosen (2,790,591). Wilfong discloses in the embodiment of Figures 11-12, a bundle of flattened foil bags (10, 11) having a generally uniform thickness with each bag comprising a front portion (13) having an upper edge, a rear portion (14), a sealed bottom (17), a plurality of first incisions (20) extending entirely through the foil bag and a plurality of second incisions (21) in the front portion and extending between the upper edge and the plurality of first incisions and the second incisions having an essentially straight shape. The bag of Wilfong is capable to be supported on a pin support of a foil bag opening machine. Wilfong also discloses the other claimed limitations except for the first incisions comprise a closed shape.

Wilfong further discloses a bag in the embodiment of Figure 19 comprises a plurality of first incisions (20, 21) having a closed shape. Sengewald teaches a bundle of flattened foil bags (11) with each bag comprising a front portion having an upper edge (17), a rear portion (14), a sealed bottom, a plurality of first incisions (13, 13a) extending entirely through the foil bag with the first incisions having a closed. Rosen shows a bundle of flattened foil bags (10-14) with each bag comprising a first incisions (17, 18) and the first incisions having a closed shape. Rosen further discloses the first incisions are substantially equal to a cross-sectional shape of a pin support (28, see Figure 6).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made in view of the embodiment of Figure 19 of Wilfong or Sengewald or Rosen to modify the plurality of first incisions in the embodiment of Figures 11-12 of Wilfong so the

plurality of first incisions comprise a closed shape to facilitate receiving a circular pin support and the selection of the specific shape for the first incisions such as the shape of Wilfong or Sengewald or Rosen would have been an obvious matter of design choice inasmuch as the resultant structures will work equally well and since a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. In re Dailey et al., 149 USPQ 47.

As to claims 4, 6 and 21, Wilfong further discloses the second incisions do not extend into the rear portion (Figure 12 and column 8, lines 8-15) and front side portions having a plurality of third incisions extending between the upper edge of the front side portions and the plurality of first incisions.

As to claim 22, Wilfong discloses the rear portion having a plurality of third incisions (20) and the third incisions as modified comprise a closed shape and the second incisions do not extend into the rear portion/solid surface (Figure 12 and column 8, lines 8-15).

Response to Arguments

Applicant's arguments filed on 4/6/2009 have been fully considered but they are not deemed to be persuasive.

Applicant's arguments with respect to "design choice" and MPEP 2144.04 (VI) (C) on page 6 of the remarks are noted. They are not persuasive because the change in shape is a matter of choice/design choice (see MPEP 2144.04(IV)(B)).

Applicant argues “The prior art must provide a motivation or reason ...” is noted. This is not persuasive because Sengewald or Rosen shows the reason or motivation by having a close shape (see the drawings).

Applicant argues with respect to “the resultant structures will work equally well” is noted. The arguments are not persuasive because whether the first incisions of Wilfong comprise not closed shape or closed shape as taught by Sengewald or Rosen, the resultant structures such as the bags comprise either not closed shape or closed shape are capable to receive the pin support (26) of Wilfong.

Applicant’s arguments with respect to Wilfong on page 7 of the remarks are noted. They are not persuasive because the bags of Wilfong as modified comprise a closed shape substantially equal to a cross-section shape of the pin support as taught by Rosen and also “the pin support” that Applicant relies upon and argues in the remarks is not positively recited in the claims.

Applicant’s arguments with respect to Sengewald on page 8 of the remarks are noted. They are not persuasive for the reasons as set forth above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

lkb
May 11, 2009

/Luan K. Bui/
Primary Examiner
Art Unit 3728